

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #5	CCRB Case #: 201902628	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/17/2019 1:56 PM	Location of Incident: § 87(2)(b)	Precinct: 47	18 Mo. SOL 9/17/2020	EO SOL 5/4/2021	
Date/Time CV Reported Sun, 03/17/2019 1:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/27/2019 11:16 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Joseph Stynes	5052	919759	047 DET
2. DT3 Christan Jimenez	6804	941962	047 DET
3. DT3 Gregory Mullarkey	05821	922844	047 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jason Dossantos	00314	948912	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Christan Jimenez	Abuse: Detective Christan Jimenez entered § 87(2)(b) in the Bronx.	
B.DT3 Gregory Mullarkey	Abuse: Detective Gregory Mullarkey entered § 87(2)(b) in the Bronx.	
C.DT3 Joseph Stynes	Abuse: Detective Joseph Stynes entered § 87(2)(b) in the Bronx.	
D.DT3 Gregory Mullarkey	Force: Detective Gregory Mullarkey used physical force against § 87(2)(b)	
E.DT3 Christan Jimenez	Abuse: Detective Christan Jimenez threatened to arrest § 87(2)(b)	

### Case Summary

On March 17, 2019, § 87(2)(b) filed this complaint with IAB via telephone, generating the original log number 2019-10605. IAB dispatched a patrol supervisor to meet with § 87(2)(b) and § 87(2)(b) prepared a handwritten complaint form. On March 29, 2019, IAB forwarded this complaint to the CCRB.

On March 17, 2019, at approximately 1:56 p.m., Detectives Christan Jimenez, Gregory Mullarkey, and Joseph Stynes, all of the 47<sup>th</sup> Precinct Detective Squad, responded to § 87(2)(b) in the Bronx. The officers were searching for § 87(2)(b) § 87(2)(b) § 87(2)(b) a witness to a recent shooting. § 87(2)(b) opened the apartment door and spoke to the detectives. Det. Jimenez, Det. Mullarkey, and Det. Stynes entered the apartment (**Allegations A through C: Abuse of Authority**, § 87(2)(g) Det. Mullarkey allegedly shoved § 87(2)(b) (**Allegation D: Force**, § 87(2)(g) Det. Jimenez threatened to arrest § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g) § 87(2)(g).

The investigation did not obtain video footage of the incident. However, the investigation obtained BWC footage of a patrol supervisor interviewing § 87(2)(b) about her complaint shortly after the incident (**Board Review 01**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Detective Christan Jimenez entered § 87(2)(b) in the Bronx.**

**Allegation (B) Abuse of Authority: Detective Gregory Mullarkey entered § 87(2)(b) in the Bronx.**

**Allegation (C) Abuse of Authority: Detective Joseph Stynes entered § 87(2)(b) in the Bronx.**

§ 87(2)(b) testified (**Board Review 02**) that the apartment belonged to her sister § 87(2)(b) and that she did not reside there. § 87(2)(b) was watching television in the living room with her minor niece, § 87(2)(b) and § 87(2)(b) was in her bedroom. The detectives knocked on the door, and § 87(2)(b) opened the door fully and stood beside the door, obstructing the path into the apartment. Det. Mullarkey was holding papers in his hand, but did not show § 87(2)(b) any documents. Det. Mullarkey asked for § 87(2)(b) § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) § 87(2)(b) did not reside in the apartment, was not their presently, and that she did not know his telephone number. Det. Mullarkey asked § 87(2)(b) who resided in the apartment and if the resident was present, and § 87(2)(b) stated that her sister lived in the apartment but was not present. Det. Mullarkey also asked § 87(2)(b) if she resided in the apartment, and § 87(2)(b) replied that she did not want to answer any questions about herself. § 87(2)(b) grasped the handle of the door and began to close it, without stepping backward. Det. Mullarkey stepped over the threshold of the apartment, followed immediately by Det. Stynes and Det. Jimenez.

§ 87(2)(b) provided a telephone statement to the CCRB (**Board Review 03**) but was not cooperative in providing a verified statement. § 87(2)(b) reported that she was inside her bedroom and heard § 87(2)(b) speaking to officers at the apartment door, but she could not hear the specifics of the conversation. § 87(2)(b) did not exit her bedroom and see the detectives until after they had entered the apartment.

§ 87(2)(b) s daughter and § 87(2)(b) s mother, provided a brief telephone statement to the CCRB (**Board Review 04**) before becoming uncooperative with the investigation. § 87(2)(b) reported that she was inside the apartment at the time of the incident and that she saw the detectives enter the apartment, but she did not provide any information about their conversation with § 87(2)(b).

The CCRB did not obtain a statement from § 87(2)(b) because § 87(2)(b) did not consent to the investigation contacting her.

Det. Mullarkey testified (**Board Review 05**) that the detectives responded to the incident location to attempt to speak to § 87(2)(b) § 87(2)(b) as a witness. Det. Mullarkey affirmed that there was no warrant for § 87(2)(b) § 87(2)(b). After opening the door halfway, § 87(2)(b) stood in the door frame and spoke to Det. Mullarkey for approximately two minutes. Det. Mullarkey asked § 87(2)(b) if § 87(2)(b) § 87(2)(b) or anyone else was present in the apartment, and if § 87(2)(b) resided in the apartment. § 87(2)(b) replied, “No,” to these questions. Det. Mullarkey heard the sound of someone moving on a sofa emanating from inside the apartment. Det. Mullarkey asked § 87(2)(b) “Do you mind if we come in and take a look?” because he wished to see who else was inside the apartment. § 87(2)(b) did not respond verbally to this question, but immediately stepped back and opened the door fully, which indicated to Det. Mullarkey that § 87(2)(b) consented to the detectives entering the apartment.

Det. Jimenez (**Board Review 06**) and Det. Stynes (**Board Review 07**) § 87(2)(g) testified that the detectives possessed a copy of an open bench warrant for § 87(2)(b) § 87(2)(b). Det. Jimenez and Det. Stynes both testified that § 87(2)(b) informed Det. Mullarkey that she did not reside inside the apartment. Det. Jimenez testified that § 87(2)(b) told Det. Mullarkey that she did not know if there was anyone else in the apartment, while Det. Stynes testified that § 87(2)(b) stated that she was alone in the apartment. Det. Jimenez and Det. Stynes both testified that they heard another individual inside the apartment, with Det. Jimenez reporting hearing a female voice and Det. Stynes reporting hearing a voice of an unknown gender and the sound of unidentified objects being moved. Det. Stynes specifically testified that, because § 87(2)(b) had stated that there was no one else in the apartment but he heard the sound of another person inside, he believed that § 87(2)(b) was lying to the detectives and was possibly attempting to conceal § 87(2)(b) § 87(2)(b) presence in the apartment. Det. Jimenez and Det. Stynes also both testified that § 87(2)(b) made gestures indicating that she was inviting them inside. Det. Jimenez specifically testified that § 87(2)(b) opened the door more fully and made a sweeping gesture with her hand after Det. Mullarkey asked if there was anyone else inside the apartment, and Det. Stynes specifically testified that § 87(2)(b) stepped back and opened the door more fully after either Det. Mullarkey or Det. Stynes asked if the detectives could look inside.

Documentation from the NYPD Warrant Squad indicates that, at the time of this incident, there was an open bench warrant for § 87(2)(b) § 87(2)(b) issued on § 87(2)(b), and listing his address as § 87(2)(b) (**Board Review 08**).

§ 87(2)(g)

Officers may enter any premises in which they reasonably believe the subject of a warrant to be present. New York Criminal Procedure Law § 120.80 (**Board Review 9**) and New York Criminal Procedure Law § 530.70 (**Board Review 26**), Payton v. New York, 445 U.S. 573 (US Supreme Court, 1979) (**Board Review 27**). Officers must possess specific and articulable facts that, taken together with rational influences drawn therefrom, provide a particularized and objective basis for thinking that the subject of the warrant may be present within specific premises. United States v. Bohannon, 824 F.3d 242 (US Court of Appeals, 2016) (**Board Review 28**).



**Allegation (E) Abuse of Authority: Detective Christan Jimenez threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified that, after Det. Mullarkey shoved her, she remained sitting quietly on the wastebasket for several minutes before walking into another room to complain about the detectives' actions. While § 87(2)(b) was sitting on the wastebasket, Det. Jimenez told § 87(2)(b) that she would be taken to jail if she called anyone.

§ 87(2)(b) stated that, when she first arrived in the apartment hallway, § 87(2)(b) was complaining about the detectives' actions in a loud voice. Det. Jimenez said to § 87(2)(b) "I should take you in," and may have continued, "Because you've been drinking." § 87(2)(b) could not recall the second clause of Det. Jimenez's sentence with certainty.

§ 87(2)(b) reported that Det. Jimenez said that § 87(2)(b) would be "taken in" if she did not stop talking.

Det. Jimenez testified that, after the detectives entered the apartment, § 87(2)(b) became angry and began to yell insults and profanity and to pace around the apartment. Det. Jimenez did not hear § 87(2)(b) issue any threats, and did not see § 87(2)(b)'s actions attract the attention of anyone outside the apartment. Det. Jimenez assessed that § 87(2)(b)'s actions constituted disorderly conduct, because her yelling was "trying to make the situation worse." He also assessed that her actions constituted obstructing governmental administration because, while pacing, § 87(2)(b) moved towards Det. Mullarkey and Det. Stynes while they were conducting an investigation in speaking to § 87(2)(b). Det. Jimenez did not cite any other actions taken by § 87(2)(b) which constituted disorderly conduct or obstructing governmental administration. Det. Jimenez affirmed that § 87(2)(b) could have been issued summonses for these infractions. Det. Jimenez did not recall any officer telling § 87(2)(b) that she could be arrested for her behavior, and she did not recall threatening to arrest § 87(2)(b) herself.

Det. Mullarkey and Det. Stynes consistently testified that, after they entered the apartment, § 87(2)(b) began yelling, although they could not recall specifically what § 87(2)(b) was saying because they were focused on speaking to § 87(2)(b). Both Det. Mullarkey and Det. Stynes denied that § 87(2)(b)'s conduct constituted a crime or violation, and they both denied that she was issued any commands regarding her behavior. Both Det. Mullarkey and Det. Stynes denied that Det. Jimenez or any other officer threatened to arrest § 87(2)(b).

The audio recording of § 87(2)(b)'s 911 call (**Board Review 11**) captures a few seconds of conversation between § 87(2)(b) and § 87(2)(b) (from 00:08). § 87(2)(b) complains about the detectives' actions in an agitated tone of voice.

§ 87(2)(g)  
[REDACTED]

A person is guilty of obstructing governmental administration ("OGA") in the second degree when she prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. New York State Penal Law §195.05 (**Board Review 12**). The interference must be in part, at least,

physical in nature, but criminal responsibility should attach to minimal interference set in motion to frustrate police activity. People v. Dumay, 23 N.Y.3d 518 (2014) (**Board Review 13**). In some instances, courts have found that an individual's behavior constituted OGA, even when the individual did not make physical contact with an officer or when the individual did not place her body in a position to physically prevent an officer from performing an official function. However, in those instances, the individual engaged in behavior which evinced a clear intent to obstruct police activity, such as by disobeying orders to leave a specific area and verbally warning others of imminent police enforcement, by cursing at officers while throwing objects at them, or by repeatedly disobeying orders not to approach a struggle between officers and an arrestee. See In re Davan L., 91 N.Y.2d 88 (1997); People v. Covington, 18 A.D.3d 65 (1<sup>st</sup> Dept. 2005); People v. Tisdale (Julius), 21 Misc. 3d 141(A) (2<sup>nd</sup> Dept. 2008); People v. Romeo, 9 A.D.3d 744 (3<sup>rd</sup> Dept. 2004) (**Board Reviews 14-17**).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he makes unreasonable noise or uses abusive or obscene language in a public place, among other acts (**Board Review 18**). The act must have a public rather than an individual dimension, and isolated statements to criticize the actions of a police officer rarely afford a sufficient basis to infer the presence of the "public harm" mens rea. People v. Baker, 20 N.Y.3d 354 (Court of Appeals 2013) (**Board Review 19**). There must be a factual allegation that a defendant's acts had a public dimension, such as whether bystanders or spectators noticed the incident, and that there was a risk of public inconvenience, annoyance or alarm as a result of the defendant's conduct. People v. Moreno, 14 Misc. 3d 138(A) (2<sup>nd</sup> Department, 2015) (**Board Review 20**).

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) (**Board Review 21**), § 87(2)(b) (**Board Review 22**), and § 87(2)(b) (**Board Review 23**) have been party.
- Det. Jimenez has been a member of service for 13 years and has been a subject in two CCRB complaints and three allegations, none of which was substantiated. § 87(2)(g)
- Det. Mullarkey has been a member of service for 21 years and has been a subject in three CCRB complaints and three allegations, none of which was substantiated. § 87(2)(g)
- Det. Stynes has been a member of service for 22 years and has been a subject in 11 CCRB cases and 38 allegations, four of which were substantiated:
  - #200306684 involved a substantiated frisk allegation against Det. Stynes. The Board recommended Instruction and the NYPD imposed Instruction.
  - #200404864 involved substantiated allegations of a threat of force or arrest and discourtesy against Det. Stynes. The Board recommended Command Discipline "A" and the NYPD imposed Command Discipline "A."
  - #201106779 involved substantiated allegations of physical force against Det. Stynes. The Board recommended Charges and the NYPD imposed no penalty.

○ § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of September 24, 2019, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards to this incident (**Board Review 24**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: \_\_\_\_\_

  

Investigator:	<u>Julian Phillips</u>	<u>Inv. Phillips</u>	<u>April 14, 2020</u>
	Signature	Print Title & Name	Date

  

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>April 14, 2020</u>
	Signature	Print Title & Name	Date

  

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date